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April 18, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: August 29, 2007

Case Number: TSO-0540

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxx (the individual) for access authorization 1/ under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria for Access to Classified Matter or Special Nuclear Material." Based on the record before me, I have determined that the individual's access authorization should not be granted.

I. Procedural Background

The individual is an applicant for an access authorization. In connection with his application for an access authorization, the individual was placed in DOE's Accelerated Access Authorization Program (AAAP). As part of this program, the local security office (LSO) conducted an AAAP psychological evaluation on March 30, 2006. Significant alcohol-related issues arose as a result of that evaluation, and the individual was removed from the AAAP and referred for a full background investigation. Based on alcohol-related information received during the background investigation, the individual was referred for a Personnel Security Interview (PSI) on February 5, 2007, to discuss the individual's use of alcohol. Subsequently, the LSO referred the individual for a forensic psychiatric evaluation with a DOE consultant-psychiatrist. Soon thereafter, the DOE referred this case for administrative review because it was unable to resolve the security concerns associated with the individual's use of alcohol. It then issued a Notification Letter to the individual on July 16, 2007, in which it specified the derogatory information in its possession and how that information falls within the purview of criteria contained in 10 C.F.R. Part 710.8(j) and (l) (Criteria J and L). 2/

1 / Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a).

2 / Criterion J concerns information that the individual "has been or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j) (hereinafter referred to as Criterion J). Criterion L relates
(continued...)

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the nine-hour hearing that I convened, the DOE Counsel called one witness, the DOE consultant-psychiatrist (psychiatrist). The individual called seven witnesses, including two managers, two colleagues, an EAP Counselor, a licensed addiction counselor and a clinical psychologist. He also testified on his own behalf. The DOE and the individual submitted a number of written exhibits prior to and during the hearing.

II. Standard of Review

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the individual, and to render an opinion based on that evidence. *See* 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Any doubt as to the individual's access authorization eligibility shall be resolved in favor of national security." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of the individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing the DOE that granting his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

III. Findings of Fact

The relevant facts in this case are uncontested. The individual began drinking alcohol at an early age and has been involved in four alcohol-related incidents since the age of 13. In 1977, when the individual was 13 years old, the individual was arrested and charged with Possession of Alcohol,

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in relevant part to information that a person has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; . . ." 10 C.F.R. § 710.8(l) (hereinafter referred to a Criterion L).

Residential Burglary, Larceny and Vandalism after stealing alcohol from a residence and getting “wildly drunk.” *See* Notification Letter at 2. At the age of 15, the individual was arrested and charged with DUI after consuming beers with friends. According to the individual, he was riding in a car his friend was driving when they were stopped by the police and his friend was arrested for DWI. The individual, who did not have a driver’s license at the time, attempted to drive home but was pulled over by a police officer and was arrested for DUI. *Id.*; DOE Exhibit at 2. In 1988, the individual was arrested for DUI a second time after drinking beers with friends. *Id.* According to the individual, he estimated that he drank about six beers between 7:00 pm and midnight on this occasion. The charges also included Open Container, Failure to Use a Turn Signal and Driving with an Expired License Plate. *Id.* 3/

The individual has worked for DOE since 2005. In early 2006, the individual applied for a position that required him to possess an access authorization. He was placed in AAAP. As part of this program, DOE conducted a psychological evaluation of the individual on March 30, 2006. During this evaluation, the individual reported that he had drunk alcohol on 20 to 30 occasions in the past 30 days. The individual also admitted that approximately 18 months prior to the AAAP psychological evaluation, he engaged in a verbal confrontation at a bar after consuming alcohol. *See* Notification Letter at 1. Based on the alcohol-related issues that arose during the evaluation, the psychologist who evaluated the individual recommended that he be removed from the AAAP, and be further processed with a full background investigation. On February 5, 2007, DOE conducted a personnel security interview (PSI) with the individual. During the course of this interview, the individual admitted being arrested at the age of 13 after consuming alcohol. The individual also admitted his two DUI arrests.

Based on the derogatory information obtained during the PSI, the individual was referred to a DOE consultant-psychiatrist (DOE psychiatrist) for an evaluation. On May 8, 2007, the DOE psychiatrist evaluated the individual and concluded that the individual suffers from Alcohol Abuse, in early partial remission. During the course of his evaluation, the DOE psychiatrist administered a number of laboratory tests to the individual. He noted that the individual’s Gamma GT liver enzyme level was significantly elevated. The DOE psychiatrist further noted that excessive alcohol use is the most common cause of abnormal Gamma GT elevation. DOE Exhibit 3. The DOE psychiatrist stated that the individual has not yet shown that he is rehabilitated or reformed, and recommended that the individual participate in a one-year treatment program, with maintenance of sobriety, to demonstrate adequate evidence of rehabilitation or reformation from Alcohol Abuse.

IV. Analysis

A. Security Concerns Cited Under 10 C.F.R. § 710.8(j) and (l)

3/ The individual was also arrested or issued a citation for several other offenses in his youth. At age 11, he was arrested for starting a campfire in a no-burn area, and in the early 1980s he was issued two citations for causing an accident by failing to yield and for following too closely to another vehicle. *See* DOE Exhibit 3.

The Notification Letter states in relevant part, that the individual “has been diagnosed by a psychiatrist . . . as suffering from alcohol abuse.” See 10 C.F.R. § 710.8(j). The Notification Letter indicates that the individual has been involved in four alcohol-related incidents since the age of 13 and has been diagnosed as suffering from alcohol abuse by a DOE consultant-psychiatrist.

This derogatory information creates serious security concerns about the individual. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis of alcohol abuse raises important security concerns. *See, e.g., Personnel Security Hearing* (Case No. VSO-0079), 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing* (Case No. VSO-0042), 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing* (Case No. VSO-0014), *aff’d*, *Personnel Security Review*, 25 DOE ¶ 83,002 (1995) (affirmed by OSA, 1995). In this case, the risk is that the individual’s excessive use of alcohol might impair his judgment and reliability to the point that he will fail to safeguard classified matter or special nuclear material. I therefore find that the DOE properly invoked Criterion J when it denied the individual’s access authorization.

As for Criterion L, the DOE alleges in the Notification Letter that: (1) the individual was issued 12 citations for Speeding, two of which were within a year of the PSI conducted on February 5, 2007; (2) in 1988, the individual was arrested and charged with DUI, Open Container, Failure to Use a Turn Signal and Expired Licensed Plate; (3) the individual was issued a citation in the 1980s for causing an accident by failing to yield and for causing a motor vehicle accident by following too closely to another vehicle; (4) at the age of 13, the individual was arrested and charged with Possession of Alcohol, Residential Burglary, Larceny and Vandalism, and at the age of 15, the individual was arrested and charged with DUI; and (5) at the age of 11, the individual was arrested for starting a campfire in a no-burn area. *See* Notification Letter at 2-3. This conduct calls into question the individual’s judgment, reliability, trustworthiness and ability to protect classified information. *See* Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 29, 2005 Memorandum for William Leonard, Director, Information Security Oversight Office) at ¶ 15-16. Thus, the security concern under Criterion L is also valid and the invocation of Criterion L is proper in this case.

B. Mitigation of Criterion J Concerns

A finding of derogatory information does not end the evaluation of the evidence concerning the individual’s eligibility for access authorization. The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a).

1. Lay Testimony

In the present case, the individual maintains that there are mitigating factors that alleviate the agency's security concerns and justify granting his security clearance. ^{4/} In support of this, the individual stated that he was surprised when he received the Notification Letter outlining DOE's security concerns because he did not believe that alcohol was an issue for him. Transcript of Hearing (Tr.) at 200. The individual testified that it has been 19 years since his last alcohol arrest and that, since that time, he has "tried to comport [his] conduct in a way which [he] felt was aboveboard and legal." *Id.* at 202. He explained that he now has children and takes his responsibilities seriously. *Id.* In addition, the individual testified that his father died of liver cancer and his grandfather died of stomach cancer, which have made him keenly aware of his health. *Id.* Because of his family health background, the individual testified that he routinely receives complete physicals which include blood, urinalysis and liver panels. *Id.* at 203. According to the individual, prior to the DOE psychiatrist's report, none of his test results had ever raised a concern. *Id.* at 204. The individual recalled that on one occasion when he first reported to work in 2005, his employer performed a complete physical on him. He testified that the only feedback he received concerned a high cholesterol reading. The individual was also told that he had a slightly elevated liver enzyme as a result of a large hematoma or bruise on his knee. *Id.* at 205. The individual reiterated that he was surprised when the DOE psychiatrist reported that his liver enzyme, GGT, was elevated. Shortly after being evaluated by the DOE psychiatrist, the individual testified that he had blood work done as a follow-up because he had contracted methicillin resistant staph aureus from his daughter. *Id.* at 207. This bloodwork revealed that the individual was borderline for Hepatitis A. *Id.* at 211. He asserted that there are other reasons besides alcohol consumption, including Hepatitis A, that could have caused his liver enzyme level to be elevated. The individual also had several complete liver panels completed by his primary care physician. He asserted that his liver panels were all normal and that he was never told that his levels were problematic. *See* Individual Exhibit 1. The individual submitted several exhibits to confirm that he had several liver panels completed by his physician and that his liver enzymes were all within the normal range. *Id.*

The individual admitted that he had a problem with alcohol in the past, but asserted that he does not have a problem with alcohol now and has stopped drinking. Tr. at 226. In describing his pattern of drinking prior to his evaluation by the DOE psychiatrist, the individual testified that he would consume alcohol on 20 to 30 occasions per month. *Id.* at 248. According to the individual, "it may have been that there were months where I went with a beer a night, you know, as much as 30 times a month." *Id.* He described his drinking as "situationally dependent," depending on what his responsibilities were at the time. The individual also disputed the DOE's psychiatrist's characterization of his current drinking pattern as "one to two beers each weeknight and six beers two times per weekend." *Id.* at 235. He stated that he never reported that he drank six beers every

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There was very little testimony on Criterion L. Therefore, I will discuss the mitigation of Criterion L in Section IV, C.

weekend day or weekend night. *Id.* at 236. The individual further testified that he does not have a set pattern or schedule when he drinks. *Id.* at 222. He stated that he used be a home brewer before he had children and that he drinks for flavor. *Id.* The individual also testified that he is the part owner of a local brewery. *Id.*

The individual testified that as soon as he received his Notification Letter, he immediately modified his drinking behavior by discontinuing his alcohol consumption during the week. Tr. at 255. However, he testified that he continued to consume alcohol on the weekends, typically one to two glasses of wine or beer with dinner. *Id.* When asked why he stopped drinking only during the week, the individual testified to the following:

I felt . . . DOE thinks this is an issue, DOE can have my week, and I can have my weekend. . . . I was angry . . . I enjoy the taste of alcohol, I enjoy the taste of beer . . . love my job, I love working for the government . . . But I also know that I give up a fair bit in order to do this job, including putting 500 miles a week on my car, which I have no choice . . . I'm obeying the law, I am not doing anything illegal, I am absolutely within my rights, nobody ever told me and nor was there ever any guidelines that says [I] must be able [to abstain from alcohol] to obtain a clearance.

Id. at 255-256.

The individual further testified that subsequent to receiving his Notification Letter, he met with a mental health/alcohol counselor through his employer's Employee Assistance Program (EAP), who suggested that he completely abstain from alcohol. *Id.* at 257. According to the individual, he stopped drinking completely on September 23, 2007 (about two months prior to the hearing). The individual testified that he lost weight, had more energy and started to feel better in general. *Id.* at 258. He reiterated that he was never told by his primary care physician that his liver enzymes were problematic or that his alcohol consumption was a problem. *Id.* at 260-261.

The individual also offered the testimony of three managers (Managers #1 and #2), two co-workers (Co-workers #1 and #2) and an EAP mental health/alcohol counselor to mitigate the agency's security concerns. Manager #1 testified that he has known the individual for 21 months and has interacted with the individual on a daily basis for about nine or ten months of that time. Tr. at 14. He stated that he has had dinner with the individual on business trips and has never observed him drinking any more than one or two beers with his meal. *Id.* at 17. Manager #1 further testified that he has never observed the individual in an impaired state and described the individual as a very conscientious employee. *Id.* at 21-22. Manager #1 testified that he has over 30 years of supervisory experience and has had extensive training in "fitness for duty and safety-conscious work environment." *Id.* at 24. According to Manager #1, the individual in no way demonstrates the traits he has observed in the past in employees who abused alcohol. *Id.* at 25. He reiterated that the individual is a loyal, hard-working and effective leader. *Id.*

Manager #2 served on the interviewing and selection committee for the position for which the individual applied in 2006. Tr. at 43. As a member of this committee, Manager #2 participated in the interviews and reviewed the resumes of all of the candidates for the position. *Id.* He testified that he saw no evidence during the interview process that the individual raised any security concerns. *Id.* at 51. Manager #2 further testified that the individual told him about the DOE's concern with his alcohol usage as well as concerns with his liver enzyme test. *Id.* at 48. In addition, Manager #2 stated that the individual told him that he had stopped drinking. Manager #2 testified that he did not notice any change in the individual's behavior and, further, that the individual's behavior has always been exemplary. *Id.* at 51.

Co-worker #1 testified that he has known the individual for about six years and socializes with him and his children outside of work. Tr. at 113-114. He testified that he has never observed the individual consuming more than one or two beers on social occasions. *Id.* at 116. Co-worker #1 stated that in all of his social interactions with the individual, the individual has had his children present. He testified that the individual is a good father who acts in a responsible manner around his children. *Id.* Co-worker #1 testified that he was shocked when the individual told him that DOE was concerned about his alcohol consumption. He stated that he has never known the individual to have a drinking problem. *Id.* at 118. Likewise, Co-worker #2 testified that she has known the individual for a little over a year and has never seen him consume any alcohol. Tr. at 129. She further testified that the individual is a reliable person who is extremely effective at his job. *Id.*

Finally, the individual offered the testimony of the EAP mental health/alcohol counselor (counselor). The counselor, who is a licensed mental health counselor, testified that the individual came to him seeking advice as to how to proceed with his security issues after receipt of his Notification Letter. Tr. at 65. He stated that he met with the individual on three separate occasions. During the course of his meetings, the counselor testified that he explained what to expect at the individual's hearing. The counselor also suggested that the individual completely abstain from drinking, monitor his liver enzymes and obtain an outside therapist to conduct an evaluation of him. *Id.* at 66-68. He testified that the individual informed him that he had stopped drinking and was feeling better as a result. *Id.* at 68. The counselor further testified that he believed the individual was a sincere person and is committed to living a healthy lifestyle. *Id.* at 76. He did not meet with the individual long enough to give a prognosis on the individual's future success with abstinence. *Id.* at 99.

2. Expert Testimony

a. Licensed Addiction Counselor

The individual offered the testimony of a licensed addiction counselor (alcohol counselor) to mitigate the agency's security concerns. The alcohol counselor is the Program Director of an alcohol and drug abuse treatment program and is a certified drug and alcohol counselor qualified to make a diagnosis with regard to alcohol abuse or dependence. He met with the individual on November 7, 2007, for an initial consultation and, on November 15, 2007, he conducted a comprehensive interview of the individual and administered various diagnostic tests. Based on his assessment of the individual, the alcohol counselor concluded that the individual has met the Diagnostic and Statistical Manual of

Mental Disorders, DSM-IV TR criteria for Alcohol Abuse in the past (more than 15 years ago); however, he concluded that the individual does not currently meet the diagnostic criteria for alcohol abuse or alcohol dependence. *See* Individual Exhibit 4 (Report of Alcohol Counselor, November 26, 2007) at 5. He further concluded that the individual's "current and recent past consumption of alcohol has been within controlled levels." *Id.* The alcohol counselor also found that "once the individual was informed that the amount of alcohol he had been consuming prior to July 2007 could have been a contributory factor for the increase in his GGT liver enzyme test, he immediately reduced his intake and subsequently decided to abstain." *Id.*

During the hearing, the alcohol counselor reiterated that he did not believe the individual warranted a diagnosis of alcohol abuse or alcohol dependence. Tr. at 143. He stated that he was primarily assessing the individual's consumption of alcohol in the last three years. *Id.* Although, as stated above, he believed the individual was an alcohol abuser during his teen and college years, he opined that once an individual is diagnosed with alcohol abuse, he is not necessarily always an alcohol abuser. *Id.* The alcohol counselor stated the following:

The way I look at it is you can have a period of time where you definitely abuse alcohol and/or other drugs, and then you stop abusing . . . either through treatment or you do it yourself, or things clear up for you and then you can go on socially or moderately drinking from that point on. . . I take into consideration a lot of what the DSM says and . . . it states in the criteria that there has to be recurring and intense consequences from the use of alcohol that would give a person an abuse diagnosis, and if this occurred within a 12-month period of time.

Id. at 145.

The alcohol counselor further testified that the DSM-IV TR should not be used as a cookbook, but rather one has to "look at the entire person and the circumstances surrounding what . . . how the person is drinking and what the consequences are from their drinking." *Id.*

When asked how his opinion differed from that of the DOE psychiatrist, the alcohol counselor testified that unlike the DOE psychiatrist, he did not focus on the individual's abnormal liver enzyme level. Although he acknowledged that he is not a medical doctor, the alcohol counselor testified that it is common knowledge in the medical community that a high GGT could possibly be a consequence of alcohol use, but added that an increased liver enzyme level could be a consequence of other conditions such as a virus. *Id.* at 147. He also stated that he viewed the individual's current alcohol consumption differently than the DOE psychiatrist. While the DOE psychiatrist is concerned that the individual consumes 20 to 30 beers in a 30-day period, the alcohol counselor testified that he believed that he got a better understanding of the individual's actual consumption of alcohol. *Id.* at 150. He testified to the following:

In all of these cases . . . one of the problems that I have is there's a lot of "if" questions, if he drinks this amount each day, and if he drinks that amount on the weekends, and if he drank that amount over this period of time . . . But to me . . .

there's just too much of that, because most people when they're in an interview situation . . . they realize that their job is on the line and they're trying to think about how much do I drink . . . it's not really accurate enough to me . . . when I meet with a person they don't feel as much of an adversarial situation . . . because I'm not a DOE employee . . . so we have a different rapport.

Id.

The alcohol counselor testified that, during his interview with the individual, the individual admitted that prior to July 2007 he probably, but not consistently, drank one or two beers after work and maybe a six-pack of beer on the weekends. He did not believe the individual met the DSM-IV TR criteria for alcohol abuse currently as would be indicated by "a recurrent pattern of clinical impairment or distress in, the failure to fulfill obligations, drinking in situations in which it is physically hazardous, legal problems, and social and interpersonal problems." Individual Exhibit 4 at 5. Finally, the alcohol counselor concluded that the individual has a good prognosis for the future. Tr. at 183.

b. Clinical Psychologist

The individual also offered the testimony of a licensed clinical psychologist (psychologist) who specializes in the treatment of alcohol use and substance use disorders and comorbidity. The psychologist conducted a two-and-a-half hour clinical interview of the individual and administered several diagnostic tests. She concluded that the individual met the DSM-IV TR criteria for alcohol abuse in the past (almost two decades ago), but that his current and recent past consumption for the past 12 months has been within controlled levels and he has been absent of any clinically significant impairment or distress. *See* Individual Exhibit 6. Based on her findings, the psychologist diagnosed the individual with Alcohol Abuse, in Full Remission. *Id.* She also concluded that the following factors are evidence that the individual has shown adequate evidence of rehabilitation and reformation: (1) the individual's current abstinence from alcohol; (2) changes in the individual's drinking habits over the course of his lifetime, which are supported by the absence of later alcohol-related incidents as well as the absence of occupational, legal and social incidents; (3) the individual's abstinence from illegal substances; (4) the individual's academic and employment achievements; (5) the individual's increased responsibilities with his children; and (6) the individual's relationship with the EAP counselor. *Id.* at 5.

During the hearing, the psychologist testified that the individual reported that his consumption of alcohol had been overestimated in one of DOE's case evaluation notes and later relied upon by the DOE psychiatrist. She stated that the individual reported to her that his maximum, not typical, consumption was about three beers over a period of about three hours on weekday nights and a maximum of six beers per day over an estimate of 10-12 hours on the weekends. Tr. at 279; Individual Exhibit 6 at 2. The psychologist explained that she differed from the DOE psychiatrist in the interpretation of the data she received from the individual. Tr. at 280. She further suggested that the DOE psychiatrist misinterpreted the fact that "the three beers per weekday night plus six beers both weekend days was typical and not episodic (depending on the circumstances.)" *Id.* The psychologist testified that the individual's assertion that he drank on 20 or 30 occasions in a 30-day

period “is not too different from episodic drinking and at some point having six beers versus at some point having three.” *Id.* at 282. She further testified that she did not just rely on self-reporting, but rather on several testing measures to assess the individual’s level of truthfulness. *Id.* at 283. The psychologist testified that she felt confident with the data she received. *Id.* at 284.

The psychologist reiterated that the individual met the criteria for alcohol abuse when he was much younger, about 20 years ago. *Id.* at 288. She testified that she agrees with the alcohol counselor’s conclusion that the individual does not meet the criteria for alcohol abuse today. She stated that the individual is in sustained full remission. *Id.* at 291. The psychologist testified that she reached this conclusion because the individual had gone for years without meeting the DSM-IV TR criteria for alcohol abuse. *Id.* While she testified that the individual’s GGT level was a concern for her, the psychologist stated that the first time the individual became aware that his elevated GGT could be related to his drinking was from the DOE psychiatrist’s report. *Id.* at 292. The psychologist further testified that the individual would have met one of the DSM criteria (drinking despite physical hazard) if he had continued to drink despite his risk for liver disease. *Id.* Instead, the psychologist noted that the individual exhibited adaptive or “normal behavior” when he made an appointment with his doctor, sought the advice of the EAP counselor, and cut back on his drinking. *Id.* The psychologist stated that the individual has a good prognosis for maintaining abstinence and cited the following factors as predictors of his success: (1) the individual’s high self-efficacy or his belief that he can actually carry out a goal or behavior successfully; (2) the individual’s social capital, i.e. his social resources and good problem-solving skills; (3) the relatively minor involvement with alcohol in the individual’s youth; (4) the individual’s minimal reliance on alcohol as a coping strategy, and (5) the individual’s educational background. *Id.* at 293-298.

c. DOE Psychiatrist

The DOE psychiatrist who evaluated the individual in May 2007, concluded in the psychiatric report and reaffirmed at the hearing that the individual met the criteria set forth in the DSM-IV TR for Alcohol Abuse, Early Partial Remission. DOE Exhibit 3 at 16. He found that the individual’s past history of three alcohol-related arrests qualified him for Alcohol Abuse and noted that the individual never sought treatment nor acknowledged that he had an alcohol problem. *Id.* He further noted that although the individual had no further alcohol-related legal problems as he matured, he continued to drink, in the psychiatrist’s opinion, “fairly heavily.” *Id.* He found that the individual’s acknowledgment that he drank one or two beers each weeknight and six beers two times per weekend put him “in a ‘heavy’ or ‘problem’ drinker range” as defined by the National Institute of Alcohol Abuse and Alcoholism and the National Highway Traffic Safety Administration. The DOE psychiatrist further concluded that the individual’s pattern of drinking could also be considered using alcohol habitually to excess. *Id.* He believed the individual’s past history of alcohol abuse is only in partial remission primarily due to his current consumption patterns and his abnormally elevated liver enzyme level. Based on these findings, the DOE psychiatrist concluded that the individual has not demonstrated adequate evidence of rehabilitation or reformation and recommended that the individual submit to a one-year treatment program, maintaining abstinence, in order to achieve rehabilitation or reformation. *Id.*

During the hearing, the DOE psychiatrist testified about the difference between his diagnosis and those of the alcohol counselor and the psychologist. He stated that all three experts seem to agree that the individual had an alcohol problem in the past, but asserted that the difference in their diagnoses is in the state of remission of the individual. Tr. at 337. The DOE psychiatrist testified that alcohol abuse in partial remission “best captured the nature of the [individual’s] problem” as he saw it at the time of the evaluation. *Id.* at 339. He stated that, at the time he met the individual, he found that there were clinically significant issues which concerned him and contributed to his diagnosis of alcohol abuse in partial remission. *Id.* at 341. The DOE psychiatrist testified that he was first concerned with the fact that the individual was removed from AAAP because of his alcohol use and that the individual continued to drink. *Id.* Second, he stated that the individual was then interviewed during a PSI, warned about DOE’s concern regarding excessive drinking, and again he continued to drink excessively. *Id.* Third, the DOE psychiatrist testified that he was concerned about the elevation of the individual’s liver enzyme. *Id.* at 342. He testified that the individual’s Gamma GT enzyme was triple the normal level and was the expected level in someone who is drinking excessively. *Id.* at 342-343.

With respect to the individual’s elevated liver enzyme level, the DOE psychiatrist reiterated that the individual’s high Gamma GT level “was consistent with somebody who was pounding down a six-pack on Friday and Saturday and also drinking during the week. That’s a fair amount of alcohol, and was consistent with this heavy drinking showing in the liver test.” *Id.* at 350. However, he also acknowledged that the individual’s abnormal liver enzyme test could have been influenced by Hepatitis A exposure, the use of a blood pressure medicine and the individual’s excess weight. *Id.* at 349. The DOE psychiatrist testified that the individual’s subsequent lower reading (after he stopped drinking) on his liver enzyme test is “good news” because it indicates that he is healthier, his blood sugar is normal and he has lost weight. However, the DOE psychiatrist also stated that this drop in his liver enzyme level meant that, at the time he evaluated the individual, the abnormal liver enzyme was probably due to alcohol. *Id.* at 350-351.

The DOE psychiatrist testified that, according to the individual, the individual was never informed that his liver was damaged by alcohol. However, he stated that he heard testimony during the course of the hearing that led him to believe that the individual “did have indications that his liver was being harmed by alcohol and was unwilling or unable to stop.” *Id.* at 343. The DOE psychiatrist referred to the “blip” in the individual’s liver enzyme level that was noted by his employer’s doctor, who attributed the elevation to a hematoma. *Id.* at 344. He believed that this “blip,” the fact that the individual’s father died of liver cancer, and a high normal liver enzyme level he received about eight months prior to his evaluation with the DOE psychiatrist, should have put the individual on notice that alcohol could be causing problems with his liver. *Id.* at 344-345.

After listening to the testimony of the individual and the other experts during the hearing, the DOE psychiatrist testified that he heard a number of positive prognostic factors that the psychologist discovered through her evaluation of the individual. *Id.* at 356. While he agreed that the individual has taken a number of positive steps toward rehabilitation, he did not agree with the psychologist that the individual’s prognosis is good nor that the individual has demonstrated adequate evidence of rehabilitation or reformation. *Id.* at 357. The DOE psychiatrist noted what he believed to be negative

factors that do not currently weigh in the individual's favor. First, he noted that the individual has not completed any type of alcohol treatment program and, in his opinion individuals who go through treatment programs have a better prognosis. *Id.* at 358. Second, the DOE psychiatrist noted that, even after the individual read the DOE psychiatrist's recommendation to completely abstain from alcohol, the individual was unwilling to completely stop drinking. *Id.* at 360. He added that although the individual is showing steady improvement, "he was slow to get with the program." *Id.* at 361. The DOE psychiatrist further testified that he still believes the individual should be abstinent for one year in order to be considered rehabilitated. *Id.* He testified to the following:

I think [one year reformed is] a good general guideline for a number of reasons. There's some official basis of it . . . DSM-IV uses the one year time frame to indicate the person goes from early remission to sustained remission . . . Another important reason, . . . is clinical studies, including some of the ones done lately by drug companies . . . In those studies . . . there's a real steep drop-off over that first year of people falling off the wagon, being unable to maintain their sobriety . . . what that means is if you can make it through the first year, you're in the 90th percentile. And after that first year, the drop-off rate isn't as steep. There are never any guarantees, but if you can make it through a year, that puts you in the 90th percentile of alcoholics in terms of being able to be sober.

Id. at 361-362.

The DOE psychiatrist noted further that the individual, with two months of sobriety, has improved since his evaluation, but reiterated that not enough time has passed to conclude that the individual has been rehabilitated or reformed. *Id.* at 364. Out of a range of low, medium or good, the DOE psychiatrist characterized the individual's prognosis as "medium." *Id.* at 365. He further testified that the individual's positive improvement has all been "in a sense, under duress" and driven by external factors including his job and his medical history. *Id.* at 366.

d. Hearing Officer's Evaluation

In the administrative process, it is the Hearing Officer who has the responsibility for assessing whether an individual with alcohol problems has presented sufficient evidence of rehabilitation or reformation. *See* 10 C.F.R. § 710.27. Hearing Officers properly give a great deal of deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. *See, e.g., Personnel Security Hearing* (Case No. TSO-0329), 29 DOE ¶ 83,032 (2007) (finding of rehabilitation from alcohol abuse under Criteria J); *Personnel Security Hearing* (Case No. TSO-0431), 29 DOE ¶ 83,068 (2007) (finding of no rehabilitation from alcohol abuse under Criteria J). Moreover, it is my responsibility as Hearing Officer to ascertain whether the factual basis underlying the psychiatric diagnosis is accurate, and whether the diagnosis provides sufficient grounds, given all the other information in the record, for the denial of a security clearance. *See, e.g., Personnel Security Hearing* (Case No. VSO-0068), 25 DOE ¶ 82,804 (1996). On the basis of that evaluation, I find that the diagnosis made in the present case has a proper factual basis. I am further

persuaded from the testimony of the DOE psychiatrist that the individual is not yet rehabilitated or reformed.

This case is difficult because it involves three separate expert opinions regarding whether or not the individual suffers from alcohol abuse. All agree that the individual's alcohol problems are not severe relative to others and that the individual has not had any negative legal consequences as a result of his alcohol use in almost two decades. The alcohol counselor concluded that the individual does not suffer from alcohol abuse, and both the psychologist and DOE psychiatrist agree that the individual has met the DSM criteria for alcohol abuse in the past. However, they differ in their opinions of the individual's level of remission.

After listening to all of the testimony and assessing the credibility of the witnesses during the hearing, I am persuaded by the opinion of the DOE psychiatrist that the individual suffers from alcohol abuse in partial remission. I am, therefore, unable to find that the individual has achieved adequate evidence of rehabilitation or reformation at this time. First, although the individual had not had any negative legal or social consequences as a result of his alcohol use in almost two decades, his drinking patterns demonstrate that he has consumed alcohol on a steady basis until very recently. It is still unclear from the evidence in the record, however, how much alcohol the individual actually consumed. He testified that his pattern of drinking may have been 20 to 30 occasions a month, but that it was "situationally dependent" on his circumstances. In light of the individual's abnormally high liver enzyme level, I am not convinced that the individual did not consume more than what he reported. In addition, although there are other factors that can contribute to an elevated Gamma GT enzyme level, I am persuaded by the testimony in the record that the individual's abnormal enzyme test was most likely due to his excessive use of alcohol.

Second, the individual testified that he stopped drinking because he was primarily concerned about his health, especially in light of his father's death from liver cancer. However, I agree with the DOE psychiatrist's concern and believe that the individual's motives to abstain from alcohol appear to be externally motivated by concerns for his job and his medical history and not by an internal drive to abstain from alcohol. Third, and most significantly, the individual has only achieved two months of sobriety at the time of the hearing and has never participated in a treatment program. I am persuaded by the DOE psychiatrist's testimony that a one-year treatment program, with maintenance of sobriety, is the minimum standard needed in order to demonstrate adequate evidence of rehabilitation or reformation. The record clearly supports the DOE psychiatrist's judgment and conclusion. Based on these reasons, I must find that the individual has not yet overcome the security concerns associated with his use of alcohol. *See Personnel Security Hearing* (Case No. VSO-0359), 28 DOE ¶ 82,768 (2000), *aff'd*, *Personnel Security Review*, 28 DOE ¶ 83,016 (2001); *Personnel Security Hearing* (Case No. TSO-0011), 28 DOE ¶ 82,912 (2003); *cf. Personnel Security Hearing* (Case No. TSO-0001), 28 DOE ¶ 82,911 (2003).

C. Mitigation of Criterion L Concerns

As mentioned earlier, the DOE cited numerous incidents under Criterion L as security concerns set forth in the Notification Letter. These incidents raise valid questions regarding the individual's

honesty, reliability and trustworthiness. However, based on the testimony and the evidence provided in the record, I believe the individual has successfully mitigated these security concerns.

Most of the Criterion L concerns occurred when the individual was a child between the ages of 11 and 15, or over 20 years ago. During the hearing, the individual testified that he is now a law-abiding citizen. The individual is a divorced father of two children and takes his responsibilities seriously. Tr. at 202. With respect to the twelve speeding citations the individual received, two within a year of the PSI conducted on February 5, 2007, the individual testified that the most recent incidents occurred while he was driving his motorcycle. Tr. at 267. He explained that he got a “stuck throttle” or his throttle locked which contributed to him being caught speeding. According to the individual, he explained this situation when he was pulled over for speeding and was told the tickets would be dropped. *Id.* The individual testified that he does not intentionally set out to speed or break the law. *Id.* I believe the individual credibly explained the speeding tickets and that the other incidents occurred so long ago that they are mitigated by time. *See Revised Adjudicative Guidelines* ¶ 17 (c). Therefore, I find that the unusual conduct is unlikely to recur, and that these security concerns have been successfully mitigated.

V. Conclusion

As explained in this Decision, I find that the local DOE Security office properly invoked 10 C.F.R. § 710.8(j) and (l) in suspending the individual’s access authorization. For the reasons described above, I find that the individual has successfully mitigated the security concerns associated with Criterion L. However, I find that the individual has failed to sufficiently mitigate the security concerns associated with his use of alcohol. I am therefore unable to find that granting the individual’s access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual’s access authorization should not be granted at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: April 18, 2008